

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DORIAN SYKES,

Petitioner,

v.

Criminal No. 03-80028

Civil No. 09-14650

UNITED STATES OF AMERICA,

Respondent.

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**ORDER DENYING MOTION UNDER
18 U.S.C. § 3582(c)(2) TO REDUCE SENTENCE**

Before the court is Petitioner's motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2), filed August 8, 2011. The government filed a response on August 16, 2011. Petitioner filed a second motion, seeking an additional response from the government, on August 22, 2011.

On February 5, 2003, Petitioner pleaded guilty to bank robbery, carrying and brandishing a firearm during a crime of violence, and felon in possession of a firearm. The court sentenced Petitioner on February 15, 2005, to a total of 174 months in prison on all counts. The judgment was entered on March 14, 2005. Petitioner filed a notice of appeal, but his appeal was dismissed by the Sixth Circuit for want of prosecution on October 24, 2005. Petitioner filed a motion to vacate sentence pursuant to 28 U.S.C. § 2255, which was denied by the court as untimely on March 24, 2010.

Petitioner seeks a reduction in his sentence pursuant to 18 U.S.C. § 3582(c)(2). As a general rule, a district court "may not modify a term of imprisonment once it has been imposed."

18 U.S.C. § 3582(c). However, the statute provides an exception for defendants who have been “sentenced to a term of imprisonment *based on a sentencing range that has subsequently been lowered* by the Sentencing Commission pursuant to 28 U.S.C. 994(o).” 18 U.S.C. § 3582(c)(2) (emphasis added). Petitioner does not argue that this exception applies here; indeed, it does not. See United States v. Horn, 612 F.3d 524, 527 (6th Cir. 2010).

Rather, Petitioner contends that his guilty plea was unlawfully induced and that he was denied effective assistance of counsel. These arguments do not provide a basis for relief under 18 U.S.C. § 3582(c)(2), but relief that is available under 28 U.S.C. § 2255. As noted above, the court already denied Petitioner’s § 2255 motion as untimely.

The court does not have authority to modify Petitioner’s sentence pursuant to 18 U.S.C. § 3582(c)(2). Therefore, IT IS HEREBY ORDERED that Petitioner’s motion to vacate sentence is DENIED.

s/John Corbett O’Meara
United States District Judge

Date: October 21, 2011

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, October 21, 2011, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager